



PLANNING
DEPARTMENT

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The attached stenographer notes of the September 9, 2019 Snow Road Rear and 23 Greany Drive public hearing, prepared by Star Curry of the McCarthy Reporting Service, are a **DRAFT**. The Planning Board has not voted to accept them. These **draft** minutes may be changed, amended or corrected.

EXHIBIT 47

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TOWN OF GRAFTON
PLANNING BOARD MEETING

PUBLIC HEARING RE:

Request for Special Permit (SP 2019-8/SPA) and Site Plan Approval at 84 Snow Road Rear (tower parcel) and 23 Side Greany Drive (access parcel); Crown Castle Towers 06-2 LLC (Applicant), Rosalind E. Dennis (Tower parcel) and Global Signal Acquisitions IV LLC (Owners).

VOLUME 3PLANNING BOARD MEMBERS:

DAVID ROBBINS, CHAIRMAN

ROBERT HASSINGER, VICE CHAIRMAN

JUSTIN WOOD, CLERK

LINDA HASSINGER

PRABHU BALAJI VENKATARAMAN

VIKRAM DAVE

JOSEPH LAYDON, TOWN PLANNER

September 9, 2019
GRAFTON MUNICIPAL CENTER
30 Providence Rd
Grafton, MA

STAR GATES CURRY

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ALSO PRESENT:

VICTOR MANOUGIAN, ESQ.
MCLANE MIDDLETON
900 Elm Street
Manchester, NH 03101

CHRISTOPHER H. HEEP, ESQ.
MIYARES & HARRINGTON LLP
40 Grove Street, Suite 190
Wellesley, MA 02482

DAVID MAXSON
ISOTROPE

KELLIE SHEA, ESQ.
AMERICAN TOWER CORPORATION
10 Presidential Way
Woburn, MA 01801

SCOTT E. REGAN, ESQ.
FLETCHER TILTON PC
370 Main Street, 12th Floor
Worcester, MA 01608

PROCEEDINGS

CHAIRMAN ROBBINS: The time is now slightly past 7:30 so it would be in order to begin our public hearing, this one being the continuation of the public hearing for special permit SP 2019-8/SPA Site Plan Approval 84 Snow Road Rear and 23 Side Greany Drive, Crown Castle Towers, etc.

So let's get everybody in place for this. I believe we have here on behalf of the town in addition to the Board and staff we have David Maxson, our wireless consultant, and our additional -- if you would introduce yourself please.

MR. HEEP: Sure. Hello, everyone. My name is Chris Heep, I'm an attorney with Miyares and Harrington in Wellesley and I've been brought on to help assist the Board in its review of this application.

CHAIRMAN ROBBINS: Okay. So I'm trying to remember. I think where we left off was the Board's desire to engage outside counsel in the person of -- I'm terrible about remembering names

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-- Chris Heep?

MR. HEEP: Chris Heep, yes.

MR. LAYDON: So one of --

CHAIRMAN ROBBINS: Go ahead, go ahead, Joe.

MR. LAYDON: So one of the questions for the Chair and the Board is the request for assistance. You know, it was passed on to town counsel, town counsel recommended we seek outside counsel. By the time we got to the Board of selectmen, a period of time had gone by and the applicant graciously granted a request I made to extend the public hearing to tonight to allow for Attorney Heep to get up to speed on where we are with this application.

The applicant has submitted some revised documentation, but then we also have Attorney Heep providing his review of the application, what's before the Board.

Unfortunately, didn't have the time to try to coordinate with you as far as what we want to take first, see whether or not we want to discuss the application or hear some of the testimony first.

<p style="text-align: right;">274</p> <p>1 So I would probably recommend to the</p> <p>2 Board decide which way we want to proceed at</p> <p>3 least initially.</p> <p>4 Attorney Heep's letter is up on the</p> <p>5 website as Exhibit 43. So that people if they</p> <p>6 had taken a look, and Planning Board members, I</p> <p>7 don't know if you had a chance to take a look, if</p> <p>8 you wanted to review that as one of the first</p> <p>9 steps.</p> <p>10 CHAIRMAN ROBBINS: I have to be careful</p> <p>11 because I messed up your name last time. Victor?</p> <p>12 MR. MANOUGIAN: Victor Manougian, yes.</p> <p>13 Maybe I can do an end run.</p> <p>14 Unfortunately, I'm here to report that Jason</p> <p>15 Mayo, who is my program manager for strategic</p> <p>16 acquisition real estate from Crown Castle,</p> <p>17 conflicted out, couldn't make it tonight. So</p> <p>18 without even going into anything today, I would</p> <p>19 request that we continue to October 14th so he</p> <p>20 could be here.</p> <p>21 I did have a chance to talk with your</p> <p>22 attorney, Chris Heep, and I know where he was</p> <p>23 going to come from.</p> <p>24 I will say that I didn't see the -- I</p>	<p style="text-align: right;">276</p> <p>1 I don't think -- I was watching the website and</p> <p>2 the letter wasn't up there until quite recently</p> <p>3 so I'm sure that hardly anybody knows what advice</p> <p>4 we got on that. So it might be, might be helpful</p> <p>5 for folks and for the progress of this thing to</p> <p>6 maybe touch on a few of those things before we --</p> <p>7 CHAIRMAN ROBBINS: You thinking sort of</p> <p>8 a brief kind of review or summary of what has</p> <p>9 just been submitted?</p> <p>10 MR. HASSINGER: And then see.</p> <p>11 CHAIRMAN ROBBINS: Yeah, without,</p> <p>12 without getting too deep into it because, you</p> <p>13 know, Victor and his client would like some time</p> <p>14 to review those letters and respond, and I'm</p> <p>15 certainly willing to give them the time they need</p> <p>16 as, you know, as in general I like to make sure</p> <p>17 that everybody has the time they need to review</p> <p>18 the materials and everything.</p> <p>19 I would also just ask if just very</p> <p>20 briefly what the changes were in the revised</p> <p>21 drawings without, again, without trying to drive</p> <p>22 it too deep in the discussion, but I haven't had</p> <p>23 a chance to review these yet, so just a brief</p> <p>24 summary of what's changed and a brief summary of</p>
<p style="text-align: right;">275</p> <p>1 looked Friday late and I didn't see the I'll say</p> <p>2 the two lawyer letters. I saw them today which</p> <p>3 is in addition to Chris's, Scott Regan's on</p> <p>4 behalf of American Tower. And both have raised</p> <p>5 issues that I need my client here for.</p> <p>6 So as Joe said, I agreed to continue</p> <p>7 to today because your counsel needed time. If</p> <p>8 you remember the first meeting David Maxson</p> <p>9 couldn't be here so I agreed to hold off with our</p> <p>10 experts, brought them back, so I'm just asking</p> <p>11 for one courtesy back to continue to October</p> <p>12 14th.</p> <p>13 CHAIRMAN ROBBINS: So you're looking</p> <p>14 for some time to review and respond to the --</p> <p>15 MR. MANOUGIAN: The two letters.</p> <p>16 CHAIRMAN ROBBINS: -- the two letters</p> <p>17 and --</p> <p>18 MR. MANOUGIAN: And topics raised and</p> <p>19 have Jason here with me. After it was quick to</p> <p>20 review those seeing them on the site today.</p> <p>21 MR. HASSINGER: Well, I think that we</p> <p>22 have a good many people here who are interested</p> <p>23 in this and we have two consultants and it might</p> <p>24 be well to at least let people hear -- you know,</p>	<p style="text-align: right;">277</p> <p>1 the recent letters and without a whole lot of</p> <p>2 discussion.</p> <p>3 MR. HASSINGER: Also I want to know</p> <p>4 where this would put us on the shot clock.</p> <p>5 CHAIRMAN ROBBINS: Good question.</p> <p>6 MR. HASSINGER: Because I'm quite</p> <p>7 concerned that we are pushing this out too far.</p> <p>8 MR. HEEP: I believe it was mid-</p> <p>9 October. I forget the precise date.</p> <p>10 MR. MANOUGIAN: I filed May 28th so 150</p> <p>11 days would be about the end of October. The 14th</p> <p>12 would be before that date.</p> <p>13 MR. HASSINGER: Yeah, but it takes us a</p> <p>14 substantial amount of time to prepare a decision</p> <p>15 and act on it so I don't think we're gonna have</p> <p>16 time. Unless there is some way to extend the</p> <p>17 shot clock. And the way I hear it that's</p> <p>18 difficult.</p> <p>19 MR. HEEP: I would typically -- I'm new</p> <p>20 to this Board, but I would typically where the</p> <p>21 applicant has requested an extension of three</p> <p>22 weeks or four weeks, I would typically ask for an</p> <p>23 additional extension of time on the shot clock</p> <p>24 for this, to conduct this public hearing.</p>

<p style="text-align: right;">278</p> <p>1 MR. HASSINGER: That is possible?</p> <p>2 MR. HEEP: That is certainly possible</p> <p>3 as long as the applicant agrees to it in writing.</p> <p>4 MR. HASSINGER: Okay. Because I am not</p> <p>5 a fan of hearings that go on for six months.</p> <p>6 MR. LAYDON: Just for the Board.</p> <p>7 Application submitted May 29th, stamped in June</p> <p>8 4th, public hearings on July 8th, July 22nd,</p> <p>9 August 26th with no testimony, and then tonight.</p> <p>10 A hundred-fifty-day shot clock from the May 29th</p> <p>11 would be Saturday the 26th. So whether it's</p> <p>12 October 25th or October 28th, that's where we're</p> <p>13 right at the end.</p> <p>14 So because of town meeting we don't</p> <p>15 follow the second and fourth Monday. So then we</p> <p>16 would be looking -- we have -- because we've</p> <p>17 already established our September schedule, we're</p> <p>18 looking at October 7th and then the follow-up</p> <p>19 meeting would be October 28th. And, again,</p> <p>20 that's because of Columbus Day, the 14th, and</p> <p>21 town meeting on the 21st.</p> <p>22 So as we look at dates and all those</p> <p>23 things as far as what works for everyone, I just</p> <p>24 want to make sure that, you know, we have down</p>	<p style="text-align: right;">280</p> <p>1 MR. REGAN: Okay. What's easier for</p> <p>2 you?</p> <p>3 MR. HASSINGER: Why don't one of you</p> <p>4 use that and one of you use the chair.</p> <p>5 MR. REGAN: Good evening, everyone. As</p> <p>6 an initial matter we would oppose the request for</p> <p>7 a continuance. This thing has been going on for</p> <p>8 some time and my firm sent a letter to special</p> <p>9 counsel and basically we outlined the legal and</p> <p>10 factual arguments that we contend should have</p> <p>11 been addressed before this application was filed</p> <p>12 in the first place.</p> <p>13 The law relative to seeking the</p> <p>14 special permits has been the same for a long</p> <p>15 time. And we made it very clear that basically,</p> <p>16 you know, they filed this thing without trying to</p> <p>17 work out the economic hardship that they contend.</p> <p>18 Crown Castle is a multibillion-dollar company.</p> <p>19 Our clients have had a relationship for a number</p> <p>20 of years, with each owning, you know, easements</p> <p>21 under each other's assets nationwide. And this</p> <p>22 has already been continued to a date of Crown</p> <p>23 Castle's choosing. It should be denied.</p> <p>24 MR. HASSINGER: Does American operate</p>
<p style="text-align: right;">279</p> <p>1 that 7th and 28th.</p> <p>2 MR. HASSINGER: Are we going to hear</p> <p>3 from anybody from American Tower tonight?</p> <p>4 MR. REGAN: Yes, sir, I was going to</p> <p>5 ask for a moment to address.</p> <p>6 Good afternoon, I'll try to keep this</p> <p>7 as brief as possible. I understand this thing</p> <p>8 has been going on for a long time. My firm --</p> <p>9 MR. HASSINGER: Introduce yourself.</p> <p>10 MR. REGAN: Sorry. I'm Scott Regan on</p> <p>11 behalf of American Towers, LLC. And here with me</p> <p>12 is Kellie Shea.</p> <p>13 MS. SHEA: Hi, I'm in-house counsel for</p> <p>14 American Tower. So I would be happy to answer</p> <p>15 any American Tower-specific questions.</p> <p>16 MR. HASSINGER: We need you as close to</p> <p>17 the mic as we can get you.</p> <p>18 MR. WOOD: And there is also a podium</p> <p>19 too, if that's easier for you guys.</p> <p>20 MR. REGAN: Sorry. Is here good? Can</p> <p>21 you hear me okay?</p> <p>22 MR. HASSINGER: Yeah. We want to make</p> <p>23 sure that the folks who watch this on television</p> <p>24 can hear you though.</p>	<p style="text-align: right;">281</p> <p>1 towers the way Chris -- they do?</p> <p>2 MR. REGAN: So actually our clients</p> <p>3 have had a relationship for a long time and, yes,</p> <p>4 there are various American Tower assets</p> <p>5 nationwide where Crown Castle owns the easements</p> <p>6 underneath.</p> <p>7 So we're essentially looking at a</p> <p>8 landlord-tenant relationship. And if one party</p> <p>9 is unhappy with the economic terms of that</p> <p>10 relationship, I think it's incumbent on them, and</p> <p>11 I think the case law supports my argument, that</p> <p>12 it's their duty to try to work that out. That</p> <p>13 did not happen here. Before filing the</p> <p>14 application, I think the law is pretty clear that</p> <p>15 they should have reached out to us to discuss it,</p> <p>16 they didn't, and we have since made efforts to</p> <p>17 resolve this thing without additional need for</p> <p>18 town resources.</p> <p>19 And my understanding too is, you know,</p> <p>20 Grafton has actually dealt with these things in</p> <p>21 the past. And has denied these types of special</p> <p>22 permits for basically less evidence than has been</p> <p>23 submitted by Crown Castle here.</p> <p>24 MR. HASSINGER: I was there, so. I've</p>

<p style="text-align: right;">282</p> <p>1 been here for all of them.</p> <p>2 CHAIRMAN ROBBINS: Bob would know.</p> <p>3 MR. HASSINGER: I would know. What I'm</p> <p>4 trying, what I'm interested in is whether should</p> <p>5 they run out their lease and leave, whether --</p> <p>6 what are the prospects for still having service</p> <p>7 from the Indian Path site by some other means?</p> <p>8 MR. REGAN: I can't get too much into</p> <p>9 detail about the settlement communications. I</p> <p>10 can tell you with confidence my client has no</p> <p>11 intention whatsoever of terminating the lease.</p> <p>12 They're very happy with it. It's a relationship</p> <p>13 that has worked nationwide for a long time.</p> <p>14 MR. HASSINGER: But they've said that</p> <p>15 their lease is up, you know, next year. And if</p> <p>16 they leave, if they don't renew, then is there a</p> <p>17 prospect of -- because apparently there will</p> <p>18 still be a special permit active at Indian Path</p> <p>19 that would allow a tower.</p> <p>20 MS. SHEA: Yep. So we have no</p> <p>21 intention of terminating any lease with Crown</p> <p>22 Castle at the site at all. And we would like for</p> <p>23 them to remain on this parcel as they are.</p> <p>24 But if they were to terminate, which</p>	<p style="text-align: right;">284</p> <p>1 couple of times now a reference to the lease.</p> <p>2 And I believe that we're talking about the lease</p> <p>3 between American Tower, which controls the</p> <p>4 easement underneath the Crown Castle tower, and</p> <p>5 Crown Castle, which owns the tower.</p> <p>6 According to those records, I also</p> <p>7 have come to believe that there are wireless</p> <p>8 carriers who are renting ground directly from</p> <p>9 American Tower. Is that correct?</p> <p>10 MS. SHEA: I can't speak to exactly</p> <p>11 the -- what if the carriers are renting from us,</p> <p>12 but generally how those type of sites work is</p> <p>13 that there are ground lease like for shelter</p> <p>14 spaces, sometimes carriers will rent from the</p> <p>15 parcel owner or whoever owns the easement, but I</p> <p>16 don't exactly know the terms of which carrier has</p> <p>17 which ground rights with us there, so.</p> <p>18 But generally there is rental spaces</p> <p>19 on the tower and there is rental spaces on the</p> <p>20 ground to support that equipment that's on the</p> <p>21 tower. However, without me looking at that file</p> <p>22 I can't speak to specifics.</p> <p>23 MR. MAXSON: All right. Mr. Chairman,</p> <p>24 just to remind you and the Board what I said in</p>
<p style="text-align: right;">283</p> <p>1 we would advise against of course, we would</p> <p>2 entertain taking assignment of that tower if the</p> <p>3 opportunity presents itself so that we can</p> <p>4 maintain continued coverage for the Grafton area.</p> <p>5 We understand that cell towers are</p> <p>6 essential to modern society so American Tower</p> <p>7 really has no intention of taking that coverage</p> <p>8 away from the community and all the residents,</p> <p>9 so.</p> <p>10 But once again, we don't own this</p> <p>11 tower right now. We are just the land -- we own</p> <p>12 the easement. So if that in the future that</p> <p>13 opportunity presents itself, we would obviously</p> <p>14 entertain that opportunity but we're not really</p> <p>15 at that point yet and we would like to work out</p> <p>16 some type of deal with Crown Castle at this</p> <p>17 parcel itself. That's where we stand right now</p> <p>18 for that.</p> <p>19 CHAIRMAN ROBBINS: Mr. Maxson, I think</p> <p>20 you had --</p> <p>21 MR. MAXSON: Thank you, Mr. Chairman.</p> <p>22 David Maxson with Isotrope.</p> <p>23 I wrote a report after looking at the</p> <p>24 public records on this site. And I've heard a</p>	<p style="text-align: right;">285</p> <p>1 my report is that there are a couple of companies</p> <p>2 that have filed notices of lease of the ground</p> <p>3 space with the -- American Tower, the party that</p> <p>4 controls the easement. So they have leases with</p> <p>5 American Tower. It is not just Crown Castle that</p> <p>6 has a lease with American Tower.</p> <p>7 And that means that in the worst case,</p> <p>8 Crown Castle and American Tower can't come to</p> <p>9 terms, and Crown Castle decides to pack up its</p> <p>10 toys and take them away, in other words, remove</p> <p>11 its tower, there are still tenants on American</p> <p>12 Tower property that could enjoy a tower of their</p> <p>13 own or a tower of American Tower's construction.</p> <p>14 It could be messy, but it would not result in the</p> <p>15 end in a prohibition or effective prohibition of</p> <p>16 the provisional wireless service at that site</p> <p>17 because American Tower has indicated that it is</p> <p>18 doing whatever it possibly can to keep its</p> <p>19 tenants at the site.</p> <p>20 So I just reiterate what I said in my</p> <p>21 report which is the prediction that there will be</p> <p>22 a significant gap in service and there needs to</p> <p>23 be a tower on an adjacent property to solve that</p> <p>24 significant gap in my mind stretches credibility.</p>

<p style="text-align: right;">286</p> <p>1 CHAIRMAN ROBBINS: Any other questions</p> <p>2 for the American Tower representatives?</p> <p>3 MR. VENKATARAMAN: I have one question.</p> <p>4 So going back to our consultant's point. So the</p> <p>5 way I understood is it's a multi-party</p> <p>6 contractual agreement, can that still be broken</p> <p>7 off with it being Crown Castle and American</p> <p>8 Towers, if they decide hypothetically speaking if</p> <p>9 they break the contract, if they agree to void</p> <p>10 the contract, would the other carriers who have a</p> <p>11 contract with them, would they not also need to</p> <p>12 be part of this agreement to say yea or nay?</p> <p>13 MR. MAXSON: My understanding from the</p> <p>14 evidence in the record is that it's not a</p> <p>15 multi-party contractual agreement. Is that when</p> <p>16 AT&T first acquired the site, it leased ground</p> <p>17 space from the landowner and built a tower. AT&T</p> <p>18 sold its tower to a tower company which</p> <p>19 ultimately ended up in the hands of Crown Castle.</p> <p>20 when additional carriers came on the</p> <p>21 site over the years, they rented ground space</p> <p>22 from the property owner and they rented tower</p> <p>23 space from AT&T/whoever became the tower owner.</p> <p>24 So those other carriers have two</p>	<p style="text-align: right;">288</p> <p>1 for radio communications facilities.</p> <p>2 It -- it's a tenant-subtenant kind of</p> <p>3 relationship. So the tenant has the deal with</p> <p>4 the property owner and then has subtenants on his</p> <p>5 tower. So what goes on at that upper level of</p> <p>6 the agreement is between the tenant and the</p> <p>7 landlord. And the subtenants usually have the</p> <p>8 right to perhaps look at a change in landlord-</p> <p>9 tenant relationship but don't have any say over</p> <p>10 it.</p> <p>11 MR. VENKATARAMAN: Okay.</p> <p>12 MR. MAXSON: But, again, I don't want</p> <p>13 to get into interpreting these particular deals</p> <p>14 or anything like that, but in my experience</p> <p>15 that's what we see.</p> <p>16 MR. VENKATARAMAN: Generally speaking.</p> <p>17 MR. MAXSON: Yeah.</p> <p>18 MR. REGAN: And I won't get into the</p> <p>19 legalese anyways, you can all read it in my</p> <p>20 letter. But just as a reminder, we're here based</p> <p>21 on Crown Castle's application that there is an</p> <p>22 economic infeasibility. And the law does require</p> <p>23 that they explore every viable alternative in</p> <p>24 order to show that they're entitled to a special</p>
<p style="text-align: right;">287</p> <p>1 leases, independent leases. And that's why even</p> <p>2 if the tower goes away, these other carriers,</p> <p>3 according to public records, have leases with</p> <p>4 American Tower for the ground space. They still</p> <p>5 have the right to be there, they just would need</p> <p>6 to come up with a new tower if the existing tower</p> <p>7 comes down.</p> <p>8 MR. VENKATARAMAN: Okay. Not to get</p> <p>9 into too much of legalese here, but would</p> <p>10 Crystal -- sorry, Crown Castle not have it as</p> <p>11 part of their agreement that these carriers whom</p> <p>12 they have leased out space on the tower and</p> <p>13 that's -- that is by what your that lease is what</p> <p>14 they would get to lease something on the</p> <p>15 property. So all I'm trying to understand here</p> <p>16 is is it as clean as if these two parties come to</p> <p>17 an agreement and say, okay, we can void this</p> <p>18 contract and remove it, is it going to be as</p> <p>19 clean as that? Or would the carriers also need</p> <p>20 to be part of this agreement to initiate, do we</p> <p>21 have enough input about that?</p> <p>22 MR. MAXSON: I think that's certainly a</p> <p>23 question for the legal folks from someone who has</p> <p>24 negotiated leases both as a tenant and a landlord</p>	<p style="text-align: right;">289</p> <p>1 permit.</p> <p>2 My client has said repeatedly that</p> <p>3 we're willing to work with them to make this</p> <p>4 thing work, we don't want the tower to go away,</p> <p>5 we don't want Grafton to lose wireless service</p> <p>6 and as of right now there is no risk of that</p> <p>7 happening. None.</p> <p>8 MR. HASSINGER: That's what's bothered</p> <p>9 me all along. At the first hearing I asked about</p> <p>10 we need to understand the economic imperative and</p> <p>11 I asked for information and I followed that up</p> <p>12 the next time. And each time I've been told that</p> <p>13 they won't give us any. And then -- but they've</p> <p>14 said that there is an economic imperative. And</p> <p>15 then we get the letter from you folks that says</p> <p>16 they never talked to us.</p> <p>17 MR. REGAN: Right.</p> <p>18 MR. HASSINGER: That creates a problem</p> <p>19 for me.</p> <p>20 CHAIRMAN ROBBINS: Victor, you --</p> <p>21 MR. MANOUGIAN: I just want to comment</p> <p>22 on the question you raised and the special permit</p> <p>23 and the tower. And I talked with this -- about</p> <p>24 this with your counsel Chris briefly and he said</p>

<p style="text-align: right;">290</p> <p>1 he would think about it.</p> <p>2 So our position is -- and I don't know</p> <p>3 if David is right, I don't know if the carriers</p> <p>4 have ground leases with American Tower, I</p> <p>5 wouldn't know that, my client wouldn't probably</p> <p>6 know that. But I can tell you that we own the</p> <p>7 tower. That tower had special permits for</p> <p>8 different carriers to be on it. When September</p> <p>9 2020 comes, and we take down that tower because</p> <p>10 we can't agree with them still, there is no</p> <p>11 special permits left for those carriers to attach</p> <p>12 to a tower because the tower is gone.</p> <p>13 There was special permits talk about</p> <p>14 that tower, that metal, that level and the size</p> <p>15 of antennas and all that. So I believe, unless</p> <p>16 I'm wrong, that there would be interruption of</p> <p>17 service if it gets to that point because if we</p> <p>18 take the tower down then they're not going</p> <p>19 anywhere until they file a new application for</p> <p>20 the land that they have a lease on. I can't</p> <p>21 argue with that, that they can do that.</p> <p>22 But I don't think that just because</p> <p>23 there was already four special permits, or how</p> <p>24 many assigned to carriers, that they can just</p>	<p style="text-align: right;">292</p> <p>1 MR. HEEP: After you.</p> <p>2 MR. WOOD: Go ahead.</p> <p>3 MR. HEEP: So I was just gonna briefly</p> <p>4 if I could just walk through, walk through the</p> <p>5 comments that I provided in the letter earlier</p> <p>6 today.</p> <p>7 As I said earlier, I was brought in to</p> <p>8 review this application from a legal perspective.</p> <p>9 I've done that, I've reviewed all the application</p> <p>10 materials and primarily attempted to evaluate the</p> <p>11 applicant's claim that there is an economic</p> <p>12 hardship here that would entitle it to some</p> <p>13 benefit or preferential treatment under the</p> <p>14 federal Telecommunications Act.</p> <p>15 Part of the applicant's argument in</p> <p>16 the application materials is that there is a new</p> <p>17 FCC declaratory ruling that went into effect</p> <p>18 earlier this year which allows applicants to rule</p> <p>19 out potential sites based on excessive costs.</p> <p>20 There is a lot of stuff in that new FCC</p> <p>21 declaratory ruling, but in terms of costs, the</p> <p>22 ruling is primarily concerned with local fees and</p> <p>23 charges that the town can charge</p> <p>24 telecommunications applicants for applications</p>
<p style="text-align: right;">291</p> <p>1 tomorrow put up a new tower. They'd have to go</p> <p>2 back through here, come in with designs, tower</p> <p>3 height, composite material, whatever they're</p> <p>4 going to do. So that's my opinion and I'll defer</p> <p>5 to your counsel on that.</p> <p>6 But and, again, I don't want to get</p> <p>7 into too much because my client is not here to</p> <p>8 answer some of the things he's raising.</p> <p>9 MR. HASSINGER: The original permit we</p> <p>10 were told was granted to AT&T. I'm not aware of</p> <p>11 a transfer, of us being involved in any way when</p> <p>12 it moved to other ownership. So I'm not sure</p> <p>13 that your argument doesn't come up there, too.</p> <p>14 MR. MANOUGIAN: And you wouldn't.</p> <p>15 These things get sold in the industry through,</p> <p>16 but that's still those special permits relate</p> <p>17 back to that tower that was built. And if that</p> <p>18 tower is gone, I don't think there is special</p> <p>19 permits left. They have to get new special</p> <p>20 permits for a new tower.</p> <p>21 MR. HASSINGER: Well, I suppose I</p> <p>22 should let those folks over there tell us about</p> <p>23 that.</p> <p>24 MR. WOOD: Yeah, I -- go ahead.</p>	<p style="text-align: right;">293</p> <p>1 with reference to the right of way. There is</p> <p>2 nothing in the declaratory ruling that directly</p> <p>3 supports the position that the applicant can rule</p> <p>4 out sites based on private rents being too high.</p> <p>5 So there is nothing in that</p> <p>6 declaratory ruling that I think directly supports</p> <p>7 the argument that's been presented in the</p> <p>8 application is point number 1.</p> <p>9 But point number 2 is, and perhaps</p> <p>10 more importantly, there is no information in the</p> <p>11 record that would allow the Board to make -- to</p> <p>12 independently analyze this claim that there is an</p> <p>13 economic hardship here. There is the applicant</p> <p>14 has asserted in the application materials that</p> <p>15 there is an economic hardship and there is some</p> <p>16 economic uncertainty with respect to the site</p> <p>17 given the relationship with its landlord/</p> <p>18 competitor American Tower, but there is no</p> <p>19 information that would allow you to determine</p> <p>20 that there is actually an economic hardship here.</p> <p>21 And I don't believe there is anything</p> <p>22 contained in the Telecommunications Act that</p> <p>23 requires you to take that representation from the</p> <p>24 applicant on, you know, on its face or accept</p>

<p style="text-align: right;">294</p> <p>1 that on faith.</p> <p>2 So if they're going to well and truly</p> <p>3 make an economic hardship argument, they've got</p> <p>4 to support it factually in the record so you can</p> <p>5 make a determination that this -- this site is</p> <p>6 indeed economically not feasible. And I don't</p> <p>7 believe that's -- that has happened here.</p> <p>8 And I think on that basis as well they</p> <p>9 haven't proven entitlement to any kind of relief</p> <p>10 under the Telecommunications Act.</p> <p>11 So I think as with all tele-</p> <p>12 communication applications that the Board is</p> <p>13 reviewing, the Board has the ability to require</p> <p>14 the applicant to investigate alternative sites</p> <p>15 and go to sites that are better under your zoning</p> <p>16 bylaw than the one that they first selected.</p> <p>17 This application is interesting in</p> <p>18 that the alternate site already exists. It's</p> <p>19 already up and running, there is already a tower</p> <p>20 there. And I think the Board would be well</p> <p>21 within its rights to expect the applicant to do</p> <p>22 everything in its power to remain, remain at 20</p> <p>23 Indian Path with its tower and the carriers who</p> <p>24 are currently being serviced there.</p>	<p style="text-align: right;">296</p> <p>1 MR. HASSINGER: Right, sure.</p> <p>2 MR. HEEP: And I absolutely agree that</p> <p>3 this application is -- the claim that there is</p> <p>4 going to be an effective prohibition, which is</p> <p>5 the applicant's claim, is hurt by the absence of</p> <p>6 any carrier present in the room who are making</p> <p>7 actual statements in the application materials.</p> <p>8 I would expect I think that they need that as</p> <p>9 part of their application.</p> <p>10 CHAIRMAN ROBBINS: It appears to me</p> <p>11 that there is currently no gap in coverage.</p> <p>12 There is the potential of a gap that's at issue</p> <p>13 here, but there is no current gap in coverage.</p> <p>14 And the likelihood of that potential gap becoming</p> <p>15 reality is at best unknown.</p> <p>16 You know, the applicant is suggesting</p> <p>17 and claiming that the gap will materialize or is</p> <p>18 very likely to materialize, but as you've pointed</p> <p>19 out there is -- I don't think there is anything</p> <p>20 in the record that really supports that other</p> <p>21 than the applicant's assertions. And so it's</p> <p>22 sort of a -- it's two, two closely related</p> <p>23 problems that I'm seeing with this.</p> <p>24 One is the fact that there is no gap</p>
<p style="text-align: right;">295</p> <p>1 So I think not much additional else</p> <p>2 for me tonight. But, again, based on my review,</p> <p>3 I don't believe on the record before the Board</p> <p>4 there has been a showing that a denial of this</p> <p>5 application would be an effective prohibition of</p> <p>6 wireless services under the act. And I don't</p> <p>7 believe the applicant has made out a case for</p> <p>8 any, you know, entitlement to any relief under</p> <p>9 the TCA.</p> <p>10 MR. HASSINGER: Question. I'm not</p> <p>11 clear who the FCC's rule protects. Does it</p> <p>12 protect the service providers? Does it protect</p> <p>13 the tower owner? Does it protect the land, the</p> <p>14 land controller?</p> <p>15 MR. HEEP: The FCC's -- the</p> <p>16 Telecommunications Act is intended to allow</p> <p>17 carriers to fill out gaps in service. And in</p> <p>18 this case, so I think the answer to your question</p> <p>19 is carriers.</p> <p>20 MR. HASSINGER: And thus far I've seen</p> <p>21 nothing from any of the carriers.</p> <p>22 MR. HEEP: No, that's absolutely</p> <p>23 correct. And I know David has made that point to</p> <p>24 the Board before.</p>	<p style="text-align: right;">297</p> <p>1 now, and the other is the fact that the record</p> <p>2 doesn't really demonstrate that the gap is likely</p> <p>3 to materialize.</p> <p>4 MR. HEEP: And I think that point has</p> <p>5 been made by American Tower in their letter and</p> <p>6 in their appearance this evening as well. That</p> <p>7 the statement from the landlord that they're here</p> <p>8 and willing to work with the applicant/tenant to</p> <p>9 continue this 20 Indian Path as a viable site is</p> <p>10 I think an important point.</p> <p>11 CHAIRMAN ROBBINS: Now, if I want to</p> <p>12 be, you know, sort of giving the applicant the</p> <p>13 benefit of the doubt here I would say that the</p> <p>14 application is here before the Board in</p> <p>15 anticipation of the possibility that an agreement</p> <p>16 ultimately does not get reached. And that's,</p> <p>17 that's a very different scenario from we have a</p> <p>18 gap that we need to fill right now.</p> <p>19 MR. HEEP: Right.</p> <p>20 MR. HASSINGER: In addition to all of</p> <p>21 that, though, for me, there is another problem,</p> <p>22 that is they need a waiver which we just -- I</p> <p>23 can't possibly grant. They're now going to be</p> <p>24 less than the tower height from one of the</p>

<p style="text-align: right;">298</p> <p>1 property lines and we require 300 feet. They're</p> <p>2 going to be 73. And I don't see that -- you</p> <p>3 know, I'm only one vote on the waiver, but I've</p> <p>4 done a lot of waivers, or I've decided a lot of</p> <p>5 waivers on a lot of things, so I think that that</p> <p>6 is also a -- I think they need to find another</p> <p>7 answer.</p> <p>8 MR. WOOD: So I do have -- if you want</p> <p>9 to respond to him, I'll let you speak.</p> <p>10 MR. MANOUGIAN: No, go ahead.</p> <p>11 MR. WOOD: So just the overall thoughts</p> <p>12 for me is that, you know, at most hearings we've</p> <p>13 asked for more documentation about what is</p> <p>14 actually the financial hardship in writing and</p> <p>15 what's actually that and we haven't received</p> <p>16 anything.</p> <p>17 We have also brought up at least once</p> <p>18 or twice on something from a carrier saying that,</p> <p>19 yes, they will move with you, they will populate</p> <p>20 the tower when it moves. Or some clause,</p> <p>21 redacted or not, with another -- a lease document</p> <p>22 saying that they have to move with you.</p> <p>23 Something that says that you'll have a guaranteed</p> <p>24 carrier at the new location.</p>	<p style="text-align: right;">300</p> <p>1 MR. HASSINGER: I'm not comfortable</p> <p>2 with that much time. I'm relatively conservative</p> <p>3 but I know that it takes a long time. That will</p> <p>4 take us across Thanksgiving in terms of trying to</p> <p>5 prepare a decision and get, get results. Even if</p> <p>6 everything closes out on the night that you're</p> <p>7 talking about.</p> <p>8 MR. MANOUGIAN: Well, what time would</p> <p>9 you want for an extension of the shot clock</p> <p>10 beyond the 30 days?</p> <p>11 MR. HASSINGER: Well, certainly at</p> <p>12 least 60 days. But I -- I'm not at all sure that</p> <p>13 this is going to be productive.</p> <p>14 MR. MANOUGIAN: Well, that's why I'm</p> <p>15 asking. Because I'm not opening anything here.</p> <p>16 MR. HASSINGER: What additional -- I</p> <p>17 mean, having your client here is one thing.</p> <p>18 Offering additional information that we've looked</p> <p>19 for and that you haven't provided, what are you</p> <p>20 going to provide for us at that time?</p> <p>21 MR. MANOUGIAN: There is emails</p> <p>22 attached to the attorney's letter that I saw</p> <p>23 today that I want my client to look at and give</p> <p>24 me answers about, where they say they</p>
<p style="text-align: right;">299</p> <p>1 The other thing that struck me in</p> <p>2 looking at things is where one of your, I'm</p> <p>3 sorry, I don't remember who it was that spoke,</p> <p>4 but was talking about how the monopolies never</p> <p>5 fall. And in our record we have someone that</p> <p>6 pointed out a few cases that it's happened. And</p> <p>7 where, you know, I did mention to move it, you</p> <p>8 know, off is one of my thoughts away from the</p> <p>9 houses, but even still having a tower that would</p> <p>10 fall even if it stays right at its focal point</p> <p>11 where it's held up and it goes off the property</p> <p>12 line, that's a little bit troubling to me. So</p> <p>13 that's -- those are just my thoughts offhand</p> <p>14 right now.</p> <p>15 MR. MANOUGIAN: Thank you, Mr.</p> <p>16 Chairman. I don't want to address anything</p> <p>17 raised because I'm still hoping to get an answer</p> <p>18 on our request to continue.</p> <p>19 I listened to what Joe said that the</p> <p>20 shot clock runs out October 26th. I will extend</p> <p>21 the shot clock 30 days from October 26th, so that</p> <p>22 we can come back on October 28th and still have</p> <p>23 time for you to issue a decision without</p> <p>24 violating the shot clock.</p>	<p style="text-align: right;">301</p> <p>1 communicated I want to know what happened at my</p> <p>2 end. I don't have those answers right now.</p> <p>3 MR. HASSINGER: All I know is that when</p> <p>4 we left here there was an agreement -- there was</p> <p>5 an offer from American and I thought there was an</p> <p>6 agreement to work with them from Crown.</p> <p>7 MR. MANOUGIAN: Again, he's not here.</p> <p>8 MR. HASSINGER: Now here we are --</p> <p>9 MR. MANOUGIAN: He's not here so I</p> <p>10 can't --</p> <p>11 MR. HASSINGER: Well --</p> <p>12 MS. SHEA: Can I add about that, just</p> <p>13 about the email he's referring to?</p> <p>14 MR. HASSINGER: Yes.</p> <p>15 MS. SHEA: So I actually followed up</p> <p>16 with one of our VPs who is actually the one who</p> <p>17 sent that to Crown Castle. I followed up with</p> <p>18 her today and she confirmed that there still has</p> <p>19 been no offer made by Crown Castle even though we</p> <p>20 followed up several times. So we're still open</p> <p>21 to entertaining any type of offer that Crown</p> <p>22 Castle would provide.</p> <p>23 But I followed up with her today</p> <p>24 specifically before this hearing so that I could</p>

<p style="text-align: right;">302</p> <p>1 say that.</p> <p>2 MR. HASSINGER: Did the -- the letter</p> <p>3 or the document that you sent showed at least two</p> <p>4 efforts to raise a response from Crown and</p> <p>5 apparently you have maybe even more and you</p> <p>6 haven't received any. So what we talked about at</p> <p>7 the last -- the last time we talked about this,</p> <p>8 which was how many weeks ago when we talked about</p> <p>9 it? Was that July 8th, two months ago?</p> <p>10 MR. LAYDON: It was July 22nd.</p> <p>11 MR. HASSINGER: No, was 22nd the one</p> <p>12 that was continued? No, okay, the 22nd. Anyway,</p> <p>13 six weeks. Unless you can tell me that we're</p> <p>14 going to get some financial justification and</p> <p>15 that we're going to see applications from</p> <p>16 carriers, I don't see the viability of --</p> <p>17 MR. MANOUGIAN: I can't speak to</p> <p>18 applications with carriers right now, but I was</p> <p>19 just told that they will continue with</p> <p>20 discussions and I can go 60 days on the shot</p> <p>21 clock. And that way one more hearing.</p> <p>22 MR. HASSINGER: No, I asked for</p> <p>23 justification for your claim of economic hardship</p> <p>24 that you said at the first, I think it was the</p>	<p style="text-align: right;">304</p> <p>1 think we would be looking for some forward</p> <p>2 progress of the issue that Bob raised about the</p> <p>3 location and the waivers required for that that</p> <p>4 we've discussed before, that hasn't changed, it's</p> <p>5 still a concern.</p> <p>6 On the issue of the potential gap in</p> <p>7 coverage and the economic hardship argument,</p> <p>8 those related arguments, there is at least the</p> <p>9 opportunity for some forward progress either</p> <p>10 through Crown Castle and American Tower making</p> <p>11 some progress in negotiations or reaching a</p> <p>12 definitive conclusion that the negotiations will</p> <p>13 not be successful and that would have to be sort</p> <p>14 of I think supported by both parties.</p> <p>15 Or -- I lost, I'm sorry, I lost my</p> <p>16 train of thought. But basically in a nutshell</p> <p>17 what I'd be looking for if we were to continue</p> <p>18 was a reason to believe that some forward</p> <p>19 progress could be made on these issues, on the</p> <p>20 issues of the gap in coverage and the possible</p> <p>21 alternative resolutions for that.</p> <p>22 If, I mean, if we're -- if we -- if</p> <p>23 there is no reason to think that we're going to</p> <p>24 get over the next however many weeks, let's say</p>
<p style="text-align: right;">303</p> <p>1 first one, that you folks said you couldn't, that</p> <p>2 there was no way, that you were not gonna be able</p> <p>3 to find a solution on the current site.</p> <p>4 There was a question asked and</p> <p>5 answered as I recall. It's certainly that the</p> <p>6 impression has been that you simply were unable</p> <p>7 to do that and therefore you needed to do this</p> <p>8 new site. Okay.</p> <p>9 CHAIRMAN ROBBINS: And I think what is</p> <p>10 it, Joe, you said if we're looking to -- if we</p> <p>11 were looking to grant the applicant's request for</p> <p>12 a continuance, would October 7th have been -- you</p> <p>13 mentioned the 14th but we don't have a meeting on</p> <p>14 the 14th. We do have a meeting on the 7th.</p> <p>15 Would that be a likely date that we can do this?</p> <p>16 MR. LAYDON: It's possible. We do</p> <p>17 have -- it would be another late night. They did</p> <p>18 just add when they mentioned about granting,</p> <p>19 adding a 60 day, about meeting on the 28th. We</p> <p>20 don't currently have anything scheduled for the</p> <p>21 28th.</p> <p>22 CHAIRMAN ROBBINS: That might be.</p> <p>23 Yeah, I think in any case, though, in</p> <p>24 terms of what we've discussed so far tonight I</p>	<p style="text-align: right;">305</p> <p>1 October 28th, between now and then, if we're not</p> <p>2 likely to see any resolution of these issues,</p> <p>3 there is not much to be gained by continuing.</p> <p>4 Because based on the information we have at hand,</p> <p>5 on the record right now, I think that likely</p> <p>6 leads to one conclusion. Additional information</p> <p>7 that could change that would be -- would be worth</p> <p>8 waiting for.</p> <p>9 MR. MANOUGIAN: And if we don't have it</p> <p>10 then your decision is done right there. So I</p> <p>11 agree to do that. I will go with my client on</p> <p>12 both those points.</p> <p>13 CHAIRMAN ROBBINS: So if we were to do</p> <p>14 that, and, again, this is still a hypothetical at</p> <p>15 this point, but if we were to continue this</p> <p>16 proceeding to October 28th, we will be looking</p> <p>17 for additional information to support your case.</p> <p>18 And if by that time nothing more is forthcoming,</p> <p>19 I think we would conclude that there is really no</p> <p>20 more progress that can reasonably be expected.</p> <p>21 MS. SHEA: May I just add one more</p> <p>22 thing? I'm sorry, I keep interjecting.</p> <p>23 CHAIRMAN ROBBINS: Yes.</p> <p>24 MS. SHEA: But it seems that the</p>

<p style="text-align: right;">306</p> <p>1 continuance is so they can provide more 2 information about the economic feasibility of the 3 site. However, we've made it known from the 4 start that we want to work with Crown Castle so I 5 find it hard to believe that if it were continued 6 they'd find -- or they'd have any evidence that 7 would say we're unwilling to work with them when 8 we've made it clear from the start that we do 9 want to work with them. 10 So a continuance almost seems 11 unnecessary when we've made it clear from the 12 start that there is no evidence to produce 13 because we do want to work with them to figure 14 something out that benefits both parties here. 15 MR. HASSINGER: That's my point. If I 16 don't have a commitment to provide economic 17 justification, if I don't have a commitment to 18 provide that at the next meeting, I'm not gonna 19 vote for a next meeting. 20 MR. MANOUGIAN: I'm making that 21 commitment and I will tell my client -- 22 MR. HASSINGER: To provide the -- 23 MR. MANOUGIAN: -- that's what they 24 have to do.</p>	<p style="text-align: right;">308</p> <p>1 the application. 2 So, yes, unless, unless we receive 3 information that changes those facts, the outcome 4 is -- at this point the outcome seems to me to be 5 pretty clear. 6 MR. HASSINGER: I'm interested in 7 whether any of the other members are -- have any 8 difficulty with the waiver. Because if we 9 understood that we might know how this is going 10 to come out no matter what. 11 MS. HASSINGER: I have a lot of trouble 12 with the waiver. I think that we actually have a 13 pretty good picture of what's been going on and 14 that the fact that the two parties aren't 15 communicating, that there is a willingness on one 16 side but there has been no evidence that -- that 17 the applicant has even tried to reach out, so how 18 can they say that there is an economic problem 19 when they don't know what that economic problem 20 is. They can't demonstrate it because they've 21 never interacted with them to know what the 22 economic situation is. So how suddenly are we 23 gonna come up with something magic when they've 24 known that and known our stance.</p>
<p style="text-align: right;">307</p> <p>1 MR. HASSINGER: -- economic 2 justification that you've told us twice that you 3 can't give us? Is that what you're saying? 4 MR. MANOUGIAN: Something numbers- 5 wise. I hear you and I hear what Chris has said. 6 MR. HEEP: No, but I think American 7 Tower -- and, I'm sorry, I forget your name -- 8 MS. SHEA: My name is Kellie Shea. 9 MR. HEEP: -- made a very good point. 10 which is in terms of the Board's overall 11 preference in terms of how this application will 12 ultimately be decided, I think you're not just 13 asking for evidence of economic hardship. I 14 think you're sending the applicant off with 15 instructions that it really ought to go off and 16 get a deal done with Crown Castle because we 17 would like that, too. 18 CHAIRMAN ROBBINS: Let me put it a 19 little bit more explicitly. In my view based on 20 what's currently on the record, there is no 21 demonstrated gap in coverage, there is no 22 demonstrated economic hardship. And without 23 further evidence that -- that line of thinking 24 that those facts pretty much lead to a denial of</p>	<p style="text-align: right;">309</p> <p>1 CHAIRMAN ROBBINS: Consider Bob's 2 question, too. Should the gap and related 3 questions be adequately addressed to support 4 this, there is still the problem of the specific 5 location and the fact that on the subject 6 property there is no location for the tower that 7 does not require a fairly substantial waiver. 8 MS. HASSINGER: Exactly. 9 CHAIRMAN ROBBINS: So putting the other 10 arguments aside, which I think is the question 11 you're asking, Bob -- 12 MR. HASSINGER: Right. 13 CHAIRMAN ROBBINS: Putting the other 14 arguments aside, could we as a Board conceivably 15 four out of five of us -- I suppose actually to 16 be precise the way granting of a waiver requires 17 just a majority vote, but the permit as a whole 18 requires a super majority and it's sort of -- 19 MR. HASSINGER: The question is whether 20 there is anybody besides me who is unwilling to 21 grant the waiver. If there is -- you're not, 22 Linda, you're not willing to grant the waiver? 23 MS. HASSINGER: No. 24 MR. HASSINGER: I think the question is</p>

<p style="text-align: right;">310</p> <p>1 clear then.</p> <p>2 MS. HASSINGER: I don't, I don't see</p> <p>3 any reason to extend it for another two months.</p> <p>4 MR. WOOD: And I will say I am very</p> <p>5 borderline on even considering doing the waiver.</p> <p>6 But that -- I haven't considered that part of it</p> <p>7 too hard because the financial hardship reason is</p> <p>8 so strongly --</p> <p>9 CHAIRMAN ROBBINS: But like I say, even</p> <p>10 if you set that aside, assuming that, assuming</p> <p>11 that, although it hasn't been demonstrated up to</p> <p>12 now, assuming that the need for this tower is</p> <p>13 demonstrated --</p> <p>14 MS. HASSINGER: This site is not.</p> <p>15 CHAIRMAN ROBBINS: -- would that, would</p> <p>16 such a need motivate us to grant the waiver.</p> <p>17 MS. HASSINGER: Yeah, I don't think it</p> <p>18 would.</p> <p>19 CHAIRMAN ROBBINS: I lean towards I'm</p> <p>20 not fond of a waiver. We have granted some</p> <p>21 waivers similar to this but not -- not to the --</p> <p>22 we've discussed this before, so I don't want to</p> <p>23 go over it again. But we've seen other cases</p> <p>24 where there have been somewhat similar waivers</p>	<p style="text-align: right;">312</p> <p>1 waiver for 300 feet from property lines.</p> <p>2 And I did pull out the plans from 20</p> <p>3 Indian Path and Mr. Hassinger correctly said that</p> <p>4 currently my monopole will be set back three</p> <p>5 distances: 143, 154 and 177.</p> <p>6 So I pulled out the plans. In 20</p> <p>7 Indian Path, it was 150 feet from the property</p> <p>8 line of the Mass. -- of the Town of Grafton. It</p> <p>9 was 150 feet from the property of Lenus and</p> <p>10 Roscoe Bicknell at 40, that's their mailing</p> <p>11 address, 40 Carroll Road that they abutted, and</p> <p>12 then over by where the house is that the property</p> <p>13 is that owns this land, there is a 20-foot</p> <p>14 waiver. It's about 280 feet away from the</p> <p>15 property line. So you did give some waivers, not</p> <p>16 as much.</p> <p>17 MR. HASSINGER: And I need to see that</p> <p>18 plan. You mentioned some numbers. This plan</p> <p>19 shows 73 feet.</p> <p>20 MR. WOOD: The plan in front of us from</p> <p>21 you for the --</p> <p>22 MR. MANOUGIAN: Is that the current</p> <p>23 one?</p> <p>24 MR. WOOD: Yes.</p>
<p style="text-align: right;">311</p> <p>1 but not -- trying to look for the right word --</p> <p>2 not the magnitude of the waiver that we would be</p> <p>3 forced to look at here.</p> <p>4 MR. MANOUGIAN: Can I just comment on</p> <p>5 that?</p> <p>6 MR. HASSINGER: Well, let me finish.</p> <p>7 Also, when the Indian Path tower got a waiver, it</p> <p>8 was a very different situation. There was a gap</p> <p>9 in coverage. This was original build-out of</p> <p>10 coverage so there was a clear gap and their</p> <p>11 waiver is over the turnpike easement mostly,</p> <p>12 which is a different situation from private</p> <p>13 property in a case where we have no evidence at</p> <p>14 this point.</p> <p>15 I just we could get closure here and</p> <p>16 save everybody a lot of time.</p> <p>17 MR. MANOUGIAN: I just want to comment.</p> <p>18 I'm trying to stay away from the facts because</p> <p>19 I'm trying to get the continuance. But I did</p> <p>20 pull out, Mr. Hassinger had raised that probably</p> <p>21 at both meetings what waivers were given.</p> <p>22 So right now we reconfigured the tower</p> <p>23 so that it's going to be set back the required</p> <p>24 distances from residences. But we do need the</p>	<p style="text-align: right;">313</p> <p>1 MR. HASSINGER: 73 feet, that's what I</p> <p>2 said. The tower is what, 140 some, so that's</p> <p>3 half the tower height.</p> <p>4 MR. WOOD: 143 feet.</p> <p>5 MR. MANOUGIAN: Would you like to see</p> <p>6 the plan that I have?</p> <p>7 MR. HASSINGER: Yeah, I would like to</p> <p>8 see it.</p> <p>9 MR. MANOUGIAN: First page shows these</p> <p>10 two and then the next page has these two.</p> <p>11 (Board members conferring.)</p> <p>12 MR. MANOUGIAN: And I apologize, Mr.</p> <p>13 Hassinger, I was looking at my old numbers before</p> <p>14 we moved the tower.</p> <p>15 MR. HASSINGER: Right, it's quite</p> <p>16 significant though.</p> <p>17 At that time I think it was at least</p> <p>18 ten feet shorter than it is now. It's been</p> <p>19 extended at least once. So it was what, I don't</p> <p>20 know, it may have been 80 feet. I don't</p> <p>21 remember. And I don't know whether it tells us</p> <p>22 on this drawing.</p> <p>23 MR. MANOUGIAN: It gave the 150-foot</p> <p>24 area so I thought that was the first, the height</p>

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1 of the tower fall zone. I assume that's what
 2 that 150-foot circle was for. And then the
 3 300-foot circle.

4 MR. HASSINGER: I have no idea what the
 5 150. I guess I think maybe they were showing
 6 what, what that distance is. It was
 7 substantially -- it shows that whatever the tower
 8 was, 80 or 90 feet, versus 150, as information,
 9 it's a dotted line as -- well, it's a line that
 10 shows as a matter of information.

11 In any case, this was a different
 12 need, this was a basis of a different need. It
 13 was a very different time and a totally different
 14 board.

15 MS. HASSINGER: Well, and also that was
 16 the build-out time. It was when -- that tower
 17 was needed because it was covering the area.
 18 This isn't. They haven't proven the need. There
 19 is still a tower there.

20 MR. MANOUGIAN: Unfortunately, that's
 21 all we have whenever we do a situation like this
 22 where one tower is going to go away, another one
 23 is going to come. It's a race and I can't show
 24 it until the other one goes down. But when the

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1 other one goes down, there won't be a tower there
 2 for a little while. But I can't show that. It's
 3 a race between competitors in the industry and we
 4 would ask that you give us a chance to try to
 5 work it out.

6 MR. WOOD: When you say that just to
 7 ask, have you ever been attorney of record for
 8 another case like this where it relates to the
 9 FCC decision?

10 MR. MANOUGIAN: Where it relates to
 11 what?

12 MR. WOOD: To the FCC decision on a
 13 financial hardship where you need a tower for
 14 this reason?

15 MR. MANOUGIAN: No, it's too new.

16 MR. HASSINGER: Has there ever been a
 17 case on this point?

18 MR. MANOUGIAN: I've done cases before
 19 with reloads where the race is won by one or the
 20 other and the boards just let both go forward.

21 MR. HASSINGER: No, but my point and I
 22 asked, I asked the last time around. Has there
 23 been any case? Are we breaking new ground here?

24 MR. HEEP: I don't know of any case

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1 that precisely defines what is so expensive for a
 2 carrier that you -- they can necessarily rule a
 3 site out.

4 But there is case law in our
 5 jurisdiction that says carriers are not entitled
 6 to the cheapest or most economically beneficial
 7 site available to them. So if the cost -- at
 8 some theoretical level cost becomes an important
 9 factor but, again, neither this applicant nor any
 10 other carrier is entitled to the cheapest or
 11 close to cheapest site.

12 The Board is well within its rights to
 13 push applicants to better sites under your zoning
 14 bylaw, even if that has the consequence of making
 15 it more expensive for the carrier.

16 MR. HASSINGER: We pointed out that the
 17 adjacent parcel which this 74 feet reaches to is
 18 big enough and is positioned adequately to
 19 provide the service. They need to explore all of
 20 their options and they didn't.

21 MR. MAXSON: But if I may just add to
 22 this economic hardship thing. It's -- as I'm
 23 understanding, it's the carriers who are
 24 protected from --

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1 MR. HASSINGER: That's what I asked,
 2 yeah.

3 MR. MAXSON: -- or potentially
 4 protected from whatever, extreme or unreasonable
 5 costs or something.

6 In addition to lacking any financial
 7 information at all, what has been talked about is
 8 the impact on the tower company, Crown, and we
 9 don't know how that percolates down to the
 10 carriers as tenants of a tower in terms of rent.

11 And ultimately I would imagine that
 12 the appropriate thing to look at is what is
 13 unreasonable to the carriers. They are tenants
 14 of Crown Castle, they are tenants of American
 15 Tower, they are tenants of other tower companies.
 16 Wireless companies own their own towers in
 17 places.

18 So there is a range of monthly costs
 19 that the carriers pay for each individual cell
 20 tower site. And the tower companies manipulate
 21 their capital and their operating expenses in
 22 order to make it work.

23 So from my perspective it's a very
 24 complicated question to answer as to whether

<p style="text-align: right;">318</p> <p>1 any -- any cost that is unreasonable or</p> <p>2 unbearable by Crown is necessarily going to</p> <p>3 result in an unreasonable or unbearable cost by</p> <p>4 any of the wireless carriers.</p> <p>5 MR. HASSINGER: I wanted to follow up.</p> <p>6 MR. WOOD: Just one thought that kind</p> <p>7 of related to what you said, Bob, is that I</p> <p>8 noticed on the select board meeting agenda for</p> <p>9 tomorrow they'll be discussing the draft town</p> <p>10 warrants. And one of them was for that adjacent</p> <p>11 town-owned parcel in relation to the select board</p> <p>12 being able to enter a contract or sell it for a</p> <p>13 cell tower purpose.</p> <p>14 Now, my understanding is even if we</p> <p>15 deny this today, you know, outright deny it and</p> <p>16 then do our draft decision and everything, that</p> <p>17 if it passes at town meeting, if the select board</p> <p>18 signs off on that being a warrant and it passes</p> <p>19 at town meeting, then they still have to, Crown</p> <p>20 Castle will still have to come back for another</p> <p>21 special permit along that same line, brand new</p> <p>22 process.</p> <p>23 So if that passes, which is a much</p> <p>24 more appropriate parcel, then we would be</p>	<p style="text-align: right;">320</p> <p>1 you would still -- they would need to file</p> <p>2 another application to add another site at that</p> <p>3 time. And then you would still be in the process</p> <p>4 of weighing the various alternate locations that</p> <p>5 are available.</p> <p>6 And 20 Indian Path, even if they took</p> <p>7 their tower down, is a previously permitted site</p> <p>8 of a telecommunications tower. So it I think</p> <p>9 would necessarily have a leg up in your</p> <p>10 alternatives analysis that you would have to</p> <p>11 conduct in response to that application. And you</p> <p>12 would be able to look at other parcels as well.</p> <p>13 And I think, you know, so if there</p> <p>14 was -- if they manufactured a gap by taking their</p> <p>15 tower down, you would still have to look at what</p> <p>16 site is best situated to fill that gap in</p> <p>17 response to new applications that get submitted.</p> <p>18 And that could be American Tower building a tower</p> <p>19 at 20 Indian Path, a brand new tower could go</p> <p>20 right up, or it could be, you know, another site</p> <p>21 entirely. But so I think -- I think -- I hope I</p> <p>22 answered your question.</p> <p>23 MR. HASSINGER: Well, people say you</p> <p>24 can't have a break in service. It seems to me</p>
<p style="text-align: right;">319</p> <p>1 starting this process over with a brand new</p> <p>2 public hearing and everything as well. So a</p> <p>3 denial for this would not negate a resubmittal.</p> <p>4 MR. HASSINGER: Yeah, there is another</p> <p>5 area if I'm not jumping in too badly. As if.</p> <p>6 There has been suggestion that there will be a</p> <p>7 gap in service if the lease runs out or the,</p> <p>8 well, the right to operate -- the right to have</p> <p>9 the tower on that site runs out. I see two</p> <p>10 possibilities. One is that the tower gets</p> <p>11 transferred to somebody else, or the tower comes</p> <p>12 down and a new tower goes up.</p> <p>13 If the tower comes down and a new</p> <p>14 tower goes up, there will be some sort of a gap</p> <p>15 in time. That's different than there is no</p> <p>16 service, isn't it? Would a -- I mean the cell</p> <p>17 towers go out all the time for a while.</p> <p>18 MR. HEEP: Right. And I think the</p> <p>19 applicant has said that on September 20th of</p> <p>20 whatever the date is of 2020 the tower is coming</p> <p>21 down. That's the position of the applicant.</p> <p>22 I think the applicant would be foolish</p> <p>23 to take the tower down on the final day of their</p> <p>24 current lease because even if that were to occur,</p>	<p style="text-align: right;">321</p> <p>1 like it should be possible to have a break in</p> <p>2 service if it's unavoidable.</p> <p>3 MR. HEEP: I would -- I would -- I</p> <p>4 think my response would be in response to that</p> <p>5 alleged break in service, however long it would</p> <p>6 take, the current site, 20 Indian Path, would</p> <p>7 remain a viable, in my opinion, a viable</p> <p>8 alternative site that would -- that could support</p> <p>9 the denial of their new application somewhere</p> <p>10 else. Even if they take their tower down,</p> <p>11 somebody else might put one there.</p> <p>12 MR. MAXSON: And I look at this from a</p> <p>13 pragmatic perspective. That's a key question.</p> <p>14 Is a temporary interruption of service an</p> <p>15 effective prohibition, and, you know, I can't say</p> <p>16 legally, but from a practical standpoint wireless</p> <p>17 carriers, as you suggested, deal with these kind</p> <p>18 of things all the time.</p> <p>19 Water towers when they have to be</p> <p>20 refurbished and sand blasted, painted, and there</p> <p>21 are antennas on them, the antennas come off. And</p> <p>22 often what they do is they come in with temporary</p> <p>23 cell towers on wheels. Or they put in a</p> <p>24 temporary mast with a ballasted base. I saw one</p>

<p style="text-align: right;">322</p> <p>1 on Chappaquiddick, it was up for like a year or</p> <p>2 two before they got the new tower put in.</p> <p>3 So this all can be coordinated so</p> <p>4 there is no interruption in service between the</p> <p>5 dismantlement of an old tower and its replacement</p> <p>6 with a new tower.</p> <p>7 And I'm not recalling whether there</p> <p>8 are any abandonment rules in the bylaw, but</p> <p>9 generally if a facility is no longer used or the</p> <p>10 tower has to come down for some reason, you have</p> <p>11 a period of time to replace it and still maintain</p> <p>12 your permit.</p> <p>13 And from having looked at the record,</p> <p>14 the permits were all issued to wireless carriers</p> <p>15 to occupy that site with a wireless facility</p> <p>16 which includes ground equipment and antennas</p> <p>17 mounted on the tower.</p> <p>18 So it comes down to the finesse of</p> <p>19 interpreting whether a replacement tower on that</p> <p>20 site is covered by the existing special permits</p> <p>21 or not. But even if it isn't, Attorney Heep is</p> <p>22 pointing out that the site it's already</p> <p>23 developed, it's already been used for this</p> <p>24 purpose, it has the utilities necessary, the</p>	<p style="text-align: right;">324</p> <p>1 have enough information now to render a decision.</p> <p>2 CHAIRMAN ROBBINS: I have to say,</p> <p>3 particularly given my sense of the Board's</p> <p>4 position on the requested waiver, that such a</p> <p>5 waiver the Board might seriously consider</p> <p>6 granting if the demonstrated need was</p> <p>7 overwhelming.</p> <p>8 Now, the applicant has picked the</p> <p>9 location on the subject property that gets them</p> <p>10 as much distance as they can feasibly get on that</p> <p>11 particular piece of property from the neighboring</p> <p>12 houses, it's certainly not from one of the</p> <p>13 property lines, it's very close.</p> <p>14 However, given the lack, the continued</p> <p>15 lack of any overwhelming evidence supporting the</p> <p>16 need for this particular site, I suspect that the</p> <p>17 Board would be highly unlikely to grant the</p> <p>18 waiver and thus between that and the -- the -- on</p> <p>19 the record at least the lack of exploration of</p> <p>20 alternatives, it's -- it doesn't seem to me like</p> <p>21 there is much prospect of making any further</p> <p>22 forward progress on this particular application.</p> <p>23 MR. HASSINGER: Yep. At this point it</p> <p>24 seems to me that there are two options. One is</p>
<p style="text-align: right;">323</p> <p>1 telecommunications necessary, the access</p> <p>2 necessary. This is a place that the wireless</p> <p>3 carriers would be foolish to walk away from</p> <p>4 because even if a new tower has to go up and they</p> <p>5 have to wait for that, it's the least</p> <p>6 troublesome, most cost-effective alternative for</p> <p>7 them to maintain their facilities.</p> <p>8 MR. HASSINGER: Yeah, the carriers have</p> <p>9 structures and equipment inside of them so</p> <p>10 they're already -- besides the electric and</p> <p>11 communications coming in, they already have the</p> <p>12 infrastructure --</p> <p>13 MR. MAXSON: The ground equipment, yes.</p> <p>14 MR. HASSINGER: -- except for the wires</p> <p>15 up the pole and the antennas.</p> <p>16 MR. MAXSON: Right, right. So even</p> <p>17 when we're talking about the town property as a</p> <p>18 potential alternative, I ask, alternative to</p> <p>19 what? You have a working site, you have a</p> <p>20 prediction of a gap in service. You have a</p> <p>21 business situation where there are competitors</p> <p>22 who are playing the race as one of the attorneys</p> <p>23 has said. And is that something that the Board</p> <p>24 wants to be involved in, that race. Or do you</p>	<p style="text-align: right;">325</p> <p>1 to close the hearing and make a decision.</p> <p>2 The other is for the applicant to</p> <p>3 withdraw and come in with a new application that</p> <p>4 is better constructed.</p> <p>5 Right now I'd consider a withdrawal</p> <p>6 without prejudice. Once we close the hearing,</p> <p>7 that's not gonna apply.</p> <p>8 CHAIRMAN ROBBINS: I'm quite sure</p> <p>9 Victor would like to consult with his client</p> <p>10 before agreeing to a withdrawal.</p> <p>11 And we have, we have members of the</p> <p>12 public here who are interested in this. I don't</p> <p>13 want to explore any territory in this hearing</p> <p>14 that we have already explored. And everything</p> <p>15 that -- everything that's been submitted to us in</p> <p>16 writing and everything that's been said at</p> <p>17 hearings is a matter of record, we don't need to</p> <p>18 repeat that. But if we do have any comments from</p> <p>19 the public that add to what we've already put on</p> <p>20 the record, now would be the time.</p> <p>21 Mr. Whitney.</p> <p>22 MS. SHEA: Thank you.</p> <p>23 MR. REGAN: Thank you all very much.</p> <p>24 MR. WHITNEY: Richard Whitney, 13</p>

<p style="text-align: right;">326</p> <p>1 Greany Drive.</p> <p>2 I'm not gonna get into the old stuff</p> <p>3 or anything else, I promise you that. But since</p> <p>4 we've been here for this meeting from day one</p> <p>5 we've heard nothing but this is our plan, plan</p> <p>6 A -- I mean plan B. Victor has sat here with his</p> <p>7 client and saying that we're gonna go with this.</p> <p>8 Then all of a sudden we're not gonna deal with</p> <p>9 Crown Castle -- I mean American Tower, we don't</p> <p>10 want nothing to do with them. We want to walk</p> <p>11 away from them, we want to be on our own. That</p> <p>12 was said to you guys.</p> <p>13 And it was said to you that at the</p> <p>14 last meeting that we will have all this</p> <p>15 information. They asked for this to be tonight.</p> <p>16 As you see, all my neighbors, a lot of them are</p> <p>17 here tonight, and they're taking their time and</p> <p>18 where is their main guy? Not here. Why?</p> <p>19 vacation or bringing a child back to school or</p> <p>20 whatever.</p> <p>21 And also before I leave, I would ask,</p> <p>22 Mr. Chairman, if you would, if you can instruct</p> <p>23 Joe to talk to the town administrator of taking</p> <p>24 off the warrant article, talking to the select</p>	<p style="text-align: right;">328</p> <p>1 the people were, they didn't tell us -- you've</p> <p>2 asked them for information. They keep</p> <p>3 stubbing -- putting it in their back pocket,</p> <p>4 I'm sorry, but not giving us the information.</p> <p>5 And the thing is, and I've done some</p> <p>6 homework and I believe our attorney here will</p> <p>7 back me up, if that pole goes down, somebody can</p> <p>8 go right back up with another pole within I think</p> <p>9 it's 30 days by our charter or 60 days. And use</p> <p>10 the same leases.</p> <p>11 So it's leased to the AT&T, Verizon,</p> <p>12 and they wouldn't even tell us that in the</p> <p>13 beginning. I mean, we had to drag it out of</p> <p>14 them. So where do we stand with them telling you</p> <p>15 tonight I definitely will be back here on October</p> <p>16 14th with this. So as far as I'm concerned, it's</p> <p>17 a dead horse in the water, you know. Thank you.</p> <p>18 MR. MANOUGIAN: Mr. Chairman, I can't</p> <p>19 withdraw the application and I would like you to</p> <p>20 consider the request for the extension to give me</p> <p>21 time to respond to the two letters that came in</p> <p>22 Friday and today. It's just a couple weeks.</p> <p>23 Otherwise, I want to put my case in if</p> <p>24 we're going to go forward tonight. I've been</p>
<p style="text-align: right;">327</p> <p>1 board, okay, of Article 27 of selling that land</p> <p>2 or using that land for a cell tower off of 7</p> <p>3 Institute Road.</p> <p>4 Also I'll be making phone calls to the</p> <p>5 select board members because I don't believe that</p> <p>6 should be going from one because if they drop out</p> <p>7 of this or take it back without prejudice, we</p> <p>8 pass this at town meeting, that that's, you know,</p> <p>9 we're gonna do this, here comes right back in</p> <p>10 closer to my house, closer to my door. So that's</p> <p>11 where I leave that.</p> <p>12 Thank you for listening to me and it's</p> <p>13 short.</p> <p>14 MR. HASSINGER: Without prejudice I</p> <p>15 believe would only apply to essentially this</p> <p>16 plan. The question is if they -- if they</p> <p>17 withdraw with prejudice, then the only way they</p> <p>18 can come back for two years, if I'm not mistaken,</p> <p>19 is if they have a substantially different plan.</p> <p>20 If they bring in a plan on a different piece of</p> <p>21 property, that's a different game.</p> <p>22 MR. WHITNEY: I understand that, Bob.</p> <p>23 But the thing is since day one when we met with</p> <p>24 these people, they told us they didn't know who</p>	<p style="text-align: right;">329</p> <p>1 holding back talking about what we've done, but I</p> <p>2 really want to see if you're going to grant the</p> <p>3 continuance request first before we do that.</p> <p>4 CHAIRMAN ROBBINS: If you can hold on</p> <p>5 for a second. I do have a hand up from the</p> <p>6 public.</p> <p>7 MR. LINDBLAD: Hi, Dave Lindblad, 2 Old</p> <p>8 Snow Road. While I have the Board here, I just</p> <p>9 wanted to ask you guys, can I ask you guys a</p> <p>10 question?</p> <p>11 Making these decisions is there any</p> <p>12 repercussions for at best misdirecting you and at</p> <p>13 worst outright lying to you on an application</p> <p>14 process? Are there any repercussions for that</p> <p>15 besides you guys just saying no to the</p> <p>16 application?</p> <p>17 MR. HASSINGER: We're not taking sworn</p> <p>18 testimony.</p> <p>19 MR. LINDBLAD: Well, just a generic</p> <p>20 question. Instead of calling you up</p> <p>21 individually, I figured I would want to do it</p> <p>22 here. I just is there a generic --</p> <p>23 MR. HASSINGER: As it happens, I</p> <p>24 believe I've read that we could take sworn</p>

<p style="text-align: right;">330</p> <p>1 testimony but we never have in my 28 years on the 2 Board.</p> <p>3 MR. LINDBLAD: Oh, so you mean so it's 4 not sworn testimony so they can't necessarily be 5 called a lie or a misdirect or a --</p> <p>6 MR. WOOD: They can be called a lie but 7 it's not perjury I think is the response to that.</p> <p>8 MR. LINDBLAD: But there is no 9 repercussions for that? I can come up here and 10 say whatever I want to get them -- just 11 hypothetically I could just say anything I want 12 just to get the application and get it?</p> <p>13 And I think I talked to maybe Joe on 14 this and I know you guys could actually come back 15 and say, hey, you lied about this or you said 16 this and it was a false statement, you could take 17 that away I guess. Is that the only repercussion 18 that this Board has?</p> <p>19 MR. HASSINGER: Our decisions -- well, 20 Joe probably can say, but our decisions include 21 the fact that it's based on all of the 22 information that we've received and I think that 23 there is a caveat in there if it turns out.</p> <p>24 MR. LAYDON: Correct. There is, there</p>	<p style="text-align: right;">332</p> <p>1 somehow be clear that there is -- that one is 2 true and one is false say.</p> <p>3 So that's, you know, it's largely a 4 matter of what's on the record and, as Joe said, 5 ultimately the decision basically includes 6 language that says if the record the decision is 7 based on, if some element of the record that the 8 decision is based on turns out to be false, then 9 that affects the validity of the decision, so.</p> <p>10 MR. LINDBLAD: Okay.</p> <p>11 CHAIRMAN ROBBINS: There are sort of 12 repercussions but no one is going to come and put 13 you in jail, put the applicant in jail or anybody 14 else for that matter. Anybody from the public 15 can also make a statement that they believe to be 16 true but turns out not to be.</p> <p>17 MR. LINDBLAD: Okay. Just not to 18 repeat anything, but anything that we have on 19 that Planning Board page with all those notes you 20 guys have to review at some point before making 21 your decision, if it went the full distance 22 basically?</p> <p>23 MR. HASSINGER: Actually we've been --</p> <p>24 MS. LINDBLAD: Looking at it all as it</p>
<p style="text-align: right;">331</p> <p>1 is standard language in the Board's decisions for 2 special permits that basically say that the 3 decision is based upon the information, testimony 4 received, and that false information may lead to 5 the decision being null and void. So basically 6 the repercussions are legal.</p> <p>7 MR. LINDBLAD: So there is nothing 8 before the decision, you use that as part of the 9 decision?</p> <p>10 MR. LAYDON: Correct.</p> <p>11 MR. HASSINGER: That's something in the 12 decision that then if something turned up that 13 fit that criteria, consequences could follow. So 14 there is that.</p> <p>15 CHAIRMAN ROBBINS: Also, if during the 16 hearing process, if the totality of the record 17 includes a statement that is less than truthful 18 and the record also contains something that is 19 contradictory, if -- the record can, for example, 20 take two assertions of somebody's asserting this 21 fact, two things that are contradictory, those 22 are both part of the record but it should become 23 clear that which -- if there are two, if there is 24 a contradiction it should be, the record should</p>	<p style="text-align: right;">333</p> <p>1 goes?</p> <p>2 MR. HASSINGER: -- following it. You 3 know, every hour I was logging in today looking 4 for new input.</p> <p>5 MR. LINDBLAD: Okay. Gotcha, gotcha. 6 And just one last thing. Do you guys ever do -- 7 you were trying to do it but for some reason, 8 maybe I missed something, you guys were trying to 9 do -- call it what you will, I don't know what 10 you call it, kind of like a -- what's the word 11 I'm looking for -- basically making a vote 12 without making a vote?</p> <p>13 You were trying to do it, but I didn't 14 really -- you guys didn't complete it. Like 15 everybody like taking a piece of paper and 16 writing it down anonymously? You don't do 17 anonymous votes to find out, to test your waters? 18 Like you were trying to do that.</p> <p>19 MR. WOOD: We could I think.</p> <p>20 MR. HASSINGER: No. First, if we're 21 actually voting we can't have a secret vote, it 22 has to be open. And on the record. But we're 23 not to the point of having that decision to make. 24 But if we -- if we can see that the</p>

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1 economic and the carriers and all that
2 notwithstanding can set those -- if we find that
3 it's not gonna go anyway because of the waivers,
4 we can cut to the chase here and save everybody a
5 lot of time.
6 So we're trying to get a, you know,
7 idea. Hopefully people haven't, you know, people
8 are still listening, the Board members are still
9 listening.
10 MR. LINDBLAD: Okay. But you guys
11 can't do like a secret thing between
12 yourselves --
13 MR. HASSINGER: No.
14 MR. LINDBLAD: -- to figure out which
15 way you're going? I thought that's what you were
16 trying to do. But --
17 CHAIRMAN ROBBINS: No. All of our
18 votes on all matters before the Board are public.
19 MS. HASSINGER: We can't even talk to
20 each other over email or anything.
21 MR. LINDBLAD: Oh, really? Okay.
22 MS. HASSINGER: No.
23 CHAIRMAN ROBBINS: All of our business
24 is transacted --

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1 MS. HASSINGER: All transparent.
2 CHAIRMAN ROBBINS: -- in a public
3 meeting open to the public and everything we do
4 is a matter of record, including the votes. If
5 the vote is not unanimous, it's a matter of
6 record who voted in favor and who voted against.
7 MR. HASSINGER: You can check the
8 state's Open Meeting Law.
9 MR. LINDBLAD: Okay. So there is no
10 testing of the thing? Because I thought that's
11 why you were asking each Board member, I thought
12 that's -- whatever, I read it wrong. I thought
13 you were trying to --
14 MS. HASSINGER: We listen to each
15 other.
16 CHAIRMAN ROBBINS: We may, we may
17 informally get a sense of what each of us is
18 thinking about a particular issue.
19 MR. LINDBLAD: Oh, okay.
20 CHAIRMAN ROBBINS: That doesn't have --
21 it doesn't have the weight of a formal vote.
22 MR. LINDBLAD: Okay. Thank you.
23 MS. HASSINGER: Bob and I have to be
24 careful at home.

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1 MR. LINDBLAD: Gotcha. Thank you for
2 your time, appreciate it.
3 CHAIRMAN ROBBINS: A hand up there.
4 I'll get back to you, Victor, I
5 haven't forgotten about your request.
6 MR. ABRAHAM: Matt Abraham, 17 Greany
7 Drive. I just wanted to say one thing. So
8 viability of the proposed site aside -- is that
9 working?
10 viability of the proposed site aside,
11 I think it's pretty clear that where the tower
12 stands now is the most viable option. So the
13 question really becomes what constitutes
14 financial infeasibility.
15 And if you're talking about two
16 multibillion-dollar firms, I think it was
17 discussed amongst the Board a little bit what
18 that really means, and nobody has answered the
19 question of why they're claiming that. Is rent
20 now X and they want to raise the rent to 2X? Or
21 did they just not want to pay rent at all and
22 they want to own their site outright?
23 I feel like nobody is asking that
24 question and trying to put pen to paper of what

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1 the actual money is. And until that gets
2 answered, and you've been asking for that since
3 day one, so I don't know why we keep granting
4 extensions when the simplest question hasn't even
5 been addressed yet.
6 MR. HASSINGER: Of course, there is
7 another point there and that is even if they
8 provided us some information that showed that it
9 was an economic problem, would the law, would --
10 it's not an FC -- it's an FCC regulation I think,
11 or maybe it's interpretation of the law or
12 something like that, would it -- would it be
13 invoked in this case. And I think you said no.
14 MR. HEEP: I mean they've already
15 invoked it, but the new FCC declaratory ruling
16 from earlier in the year does not state, as I
17 said, it does not state the point that, you know,
18 having Crown Castle having to pay its landlord a
19 private rent of X is too much and would require
20 the Board to let them go to another site, it does
21 not say that.
22 MR. ABRAHAM: It just seems like both
23 parties are -- you know, I guess the client is
24 not here. Both parties are here. They're

<p style="text-align: right;">338</p> <p>1 obviously going back and forth by text or phone 2 call to figure out information about whether or 3 not they, you know, are okay with an extension or 4 not.</p> <p>5 The information is there, both parties 6 are here. Ask it. Why can't they tell you 7 tonight what is so economically infeasible about 8 the current location. Nobody will just blatantly 9 ask and answer that question and that's what this 10 whole case hinges on.</p> <p>11 CHAIRMAN ROBBINS: Victor, to get back 12 to you. Victor is continuing to request a 13 continuation so that he and his client can 14 respond to the latest letters from counsel for 15 the town and counsel for American Tower.</p> <p>16 Given that it seems unlikely that the 17 Board would grant this permit with the requested 18 waivers, I kind of like -- I don't mind giving 19 the applicant the opportunity to respond to 20 information that's really in some sense has come 21 to their attention in the last few days, but on 22 the probability that it won't materially affect 23 the outcome, I might suggest the shortest 24 feasible continuance for the sole purpose of a</p>	<p style="text-align: right;">340</p> <p>1 location in this hearing. And I think we've come 2 pretty close to beating that to death with the 3 exception of the applicant having an opportunity 4 to review and follow up on these two American -- 5 American Tower and our consultant.</p> <p>6 MR. MANOUGIAN: And I just want to 7 state for the record again, this is the first 8 time I'm asking for this. I have not been the 9 cause of the prior continuances. A couple of 10 weeks. If you're going to deny it then, deny it 11 then. But at least give us a chance to reply to 12 paper that's flying around in the past 48 hours.</p> <p>13 CHAIRMAN ROBBINS: That's kind of the 14 direction in which I'm heading. That it doesn't 15 seem likely to me that there is -- sorry to the 16 audience at home, I just hit the mic -- it 17 doesn't seem like there is much opportunity for 18 forward progress.</p> <p>19 But if we do keep the hearing open for 20 two more weeks and anticipate a brief 21 continuation at which time we ought to be able to 22 make a pretty firm decision, withdraw, close, or 23 if additional information does change, bring in 24 some new possibilities of further continuation to</p>
<p style="text-align: right;">339</p> <p>1 brief continuation of the hearing to assess the 2 additional information with I want to say the 3 possibility of more extensive discussion if it 4 turns out contrary to our expectations that that 5 might be warranted.</p> <p>6 We have another meeting two weeks from 7 tonight, and another meeting on October 7th, both 8 of which are fairly fully scheduled. But if 9 we're thinking -- if we want to think in terms of 10 the applicant -- for the sole purpose being the 11 applicant to respond to the latest communications 12 and then to decide where to go from there, 13 keeping in mind the possibility that you might 14 want to consult with your applicant about the 15 question we raised about possibly withdrawing 16 without prejudice, or taking some other action, 17 given all that we've talked about over the 18 several hearings about the difficulties 19 associated with this site, the potential 20 alternative sites and potential for 20, you know, 21 continuing operations at 20 Indian Path, you 22 know, there seems to me like there are several 23 alternatives that are open to consideration. 24 We've only been discussing one</p>	<p style="text-align: right;">341</p> <p>1 more deeply deliberate, that I could be 2 comfortable with.</p> <p>3 MS. HASSINGER: But it would have to 4 be very --</p> <p>5 MR. ABRAHAM: So we can't just ask the 6 question tonight about --</p> <p>7 MR. HASSINGER: We've asked it.</p> <p>8 MR. ABRAHAM: But so why can't we ask 9 American Tower?</p> <p>10 MS. HASSINGER: We did.</p> <p>11 MR. HASSINGER: We did.</p> <p>12 MR. ABRAHAM: Are you all of a sudden 13 going to raise your rent the next year, is it 14 doubling? Why --</p> <p>15 MS. HASSINGER: That's their 16 negotiations. That they're not going to tell us.</p> <p>17 MR. ABRAHAM: But if that's what this 18 whole decision hinges on, why isn't anybody -- 19 we've asked for the information and they just 20 keep denying it, they obviously know. So 21 somebody needs to answer the question.</p> <p>22 MS. SHEA: Can I briefly address? It's 23 applicable.</p> <p>24 So we have no intention to make this</p>

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1 site economically burdensome for Crown Castle.
 2 We just were asking Crown Castle to propose new
 3 terms because at this point we don't know what
 4 they want.
 5 So we want to work with them, so we
 6 can't really name anything, and American Tower
 7 can't really name anything right now with the
 8 terms because we've asked Crown Castle to do it
 9 because we want to work with them. We want to
 10 make it the most feasible for them to remain on
 11 the site because we understand that's the best
 12 option for the city.
 13 So that's why I can't exactly answer
 14 your question because it's really Crown Castle's
 15 burden at this point to say what they think is
 16 economically not feasible when we have presented
 17 every option that we have at this point for Crown
 18 Castle to make an offer to us. So by no means
 19 are we increasing our rent exponentially like he
 20 had --
 21 MR. ABRAHAM: No, I was just asking the
 22 question.
 23 MS. SHEA: -- said, but -- no, and I
 24 understand your concern, of course, because it

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1 seems like we're all just beating around the bush
 2 in some sense like you had discussed. So I just
 3 want to make it clear that there is no intention
 4 for American Tower to raise the rents some crazy
 5 amount. So I just want to make that known.
 6 MS. HASSINGER: The point has also been
 7 made to us by the attorney that even if you were,
 8 the negotiations between your two companies are
 9 not something we should be weighing in this as
 10 far as economic hardship since it's only the
 11 people -- the carriers --
 12 MS. SHEA: That's correct, yeah.
 13 MS. HASSINGER: -- that are the ones
 14 affected by that law. And that for us the issue
 15 we're looking at is whether or not we're willing
 16 to grant a waiver on a property for a wireless
 17 facility that doesn't need to be built.
 18 MS. SHEA: Right.
 19 MS. HASSINGER: So the issue is not
 20 really your negotiations. That's not really any
 21 of our concern. What our concern is is this
 22 particular property and what we're looking at,
 23 the permit.
 24 MR. HASSINGER: The --

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1 MR. VENKATARAMAN: I have one question.
 2 MR. HASSINGER: There have been points
 3 raised. You mentioned this new correspondence.
 4 But it's just reinforcing what we started with at
 5 the first hearing when we asked this.
 6 You've had lots of time to provide
 7 that information. You've declined to provide
 8 that information. You had your chance as far as
 9 I'm concerned.
 10 So I'm not in favor of, I'm not in
 11 favor of on and on with hearings. This is -- for
 12 28 years I've been not in favor of letting
 13 hearings go on and on.
 14 If the Board does decide to allow a
 15 two-week continuation, though, I'm going to
 16 insist that your input is in our hands seven days
 17 before the hearing so that we have a chance to
 18 pass it on so we don't have our people seeing it
 19 the day before nor the day of the hearing.
 20 MR. VENKATARAMAN: I second that.
 21 MR. HASSINGER: The only
 22 information I'm -- well, okay. I said it.
 23 MR. VENKATARAMAN: I have one question
 24 though. Did American Towers become the new

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1 owners for that land very recently or have you
 2 been owning the land or leasing the land for a
 3 while?
 4 MS. SHEA: Well, it was I believe in
 5 2014 we gained the easement rights. So it's just
 6 been the last five years.
 7 MR. VENKATARAMAN: Okay. The reason I
 8 ask this question is the application says that
 9 due to a change in ownership of the underlying
 10 ground space, the applicant and its subtenants
 11 are now faced with involvement of an additional
 12 unanticipated third party in the operation of
 13 their facility and equipment. I'm assuming that
 14 refers to American Towers, otherwise it's
 15 something else.
 16 If that refers to American Towers
 17 2014, 2019 is significantly a large time of --
 18 period of time in the last five years this never
 19 came up for conversation. So substantiating your
 20 point, Bob. Either the application was not
 21 complete to start with, the second part of the
 22 application says the applicant and the subtenants
 23 are facing economic hardship or it's not
 24 economically viable for both the carriers and the

<p style="text-align: right;">346</p> <p>1 applicant. So missing lots of pieces to the 2 puzzle here. Thank you for that. 3 MS. SHEA: Yeah, it's not been the last 4 two years or less than that, it's been a fairly 5 good amount of time that we've had the easement 6 rights, so. 7 MR. VENKATARAMAN: Thanks. 8 And I agree with Bob to your point if 9 we do, Chairman, if we do extend it for two 10 weeks, I agree that the information should be 11 available a week prior to that so that we don't 12 sit back here talking all of this all over again. 13 MS. HASSINGER: When we -- 14 CHAIRMAN ROBBINS: We need to bring 15 this to a close as quickly as we can, one way or 16 another it has to be brought to a close. 17 MS. HASSINGER: The whole reason why 18 it's been extended by if you will say the Board 19 is because they brought in problems. There were 20 things that weren't clear in what they were 21 presenting that we had to have clarified by extra 22 counsel. And that's, you know, so in a way we 23 didn't generate that need for an extension, you 24 know, for this delay. It's because of the lack</p>	<p style="text-align: right;">348</p> <p>1 about that right now. 2 MR. WHITNEY: Can I just ask one 3 question? 4 CHAIRMAN ROBBINS: Yes, come up to the 5 mic of course. 6 MR. WHITNEY: Richard Whitney, 13 7 Greany Drive. 8 I don't mean to be disrespectful. 9 Victor has been talking to this young lady here 10 with the white shirt and she's texting. Now, 11 she's texting to -- she's supposed to be the 12 project manager I believe? If that's -- 13 FEMALE SPEAKER: Yes. 14 MR. WHITNEY: Okay. Then why can't you 15 follow along with him right now, because you're 16 the project manager, and settle all this tonight 17 instead of talking to your supervisor, which is 18 the gentleman that was here with you last time 19 that him and I got into a little scuffle 20 together. So if you're the project manager, 21 you're managing the project, and Victor is 22 working for you then basically. 23 FEMALE SPEAKER: I don't have all the 24 information that's necessary that's been</p>
<p style="text-align: right;">347</p> <p>1 of information that was given to us that we had 2 to go really further down the road. 3 So two weeks? 4 CHAIRMAN ROBBINS: Well, it's up to the 5 applicant to make a request for whatever 6 continuation. In light of the conversation here, 7 what you would like to do? 8 MR. MANOUGIAN: Yes, we would request 9 that you continue it for two weeks. And I heard 10 get you additional information by a week before, 11 so to me that would be continuance to 9/23, 12 within full to the Board by 9/16? 13 CHAIRMAN ROBBINS: That sounds correct. 14 MR. MANOUGIAN: That would be my 15 request if the Board is willing to entertain 16 that. 17 MR. WOOD: So I will make the motion I 18 guess -- 19 MS. HASSINGER: No, he does it. 20 MR. HASSINGER: Well, he needs to write 21 it up. We have a form for you. Well, you should 22 know that by now. 23 (Board members conferring.) 24 MR. LAYDON: You don't have to worry</p>	<p style="text-align: right;">349</p> <p>1 requested here. 2 MR. HASSINGER: I have no idea what 3 she's saying. 4 CHAIRMAN ROBBINS: I'm not sure that 5 that question is particularly relevant. 6 MR. WHITNEY: No, I'm just saying, I 7 mean I'm asking this question. If they're not 8 giving us all the information, you need the 9 information to ask for an extension, but she's 10 the project manager, she should have as the 11 manager should have everything with her to do 12 this and but she's texting somebody else, her 13 boss, the owner, and saying, you know, we're 14 doing this, we're doing this, can we go off 60 15 days, 30 days, 90 days, whatever. And, you know, 16 it seems like they're just doing business right 17 behind our backs. And, you know, making 18 everything work again. I'm just saying why can't 19 she get up here as the manager, speak with 20 Victor. 21 CHAIRMAN ROBBINS: I don't know that 22 she's authorized to do that. 23 MR. WHITNEY: Well, then why is she 24 here tonight?</p>

<p style="text-align: right;">350</p> <p>1 CHAIRMAN ROBBINS: Victor is</p> <p>2 representing the client and I think it's up to</p> <p>3 victor to decide who he will use to speak on</p> <p>4 behalf of the client.</p> <p>5 MR. WHITNEY: Okay.</p> <p>6 CHAIRMAN ROBBINS: It's not my business</p> <p>7 how the client does --</p> <p>8 MR. WHITNEY: I know it's not our</p> <p>9 business to ask them how much they're making off</p> <p>10 of each one, but at least if she's the project</p> <p>11 manager she should be on tap of what's going on</p> <p>12 of doing this.</p> <p>13 CHAIRMAN ROBBINS: All right. I</p> <p>14 believe we have a written request from the client</p> <p>15 for a continuation in hand.</p> <p>16 MR. WOOD: Yes. So I will make the</p> <p>17 motion to approve the client's written request</p> <p>18 for a continuance until September 23rd at 7:30</p> <p>19 p.m.</p> <p>20 MR. HASSINGER: Grant.</p> <p>21 MR. WOOD: Grant the request.</p> <p>22 MR. VENKATARAMAN: With the 16th?</p> <p>23 CHAIRMAN ROBBINS: That's not part</p> <p>24 of it.</p>	<p style="text-align: right;">352</p> <p>1 law requires a rollcall vote.</p> <p>2 CHAIRMAN ROBBINS: Yes.</p> <p>3 MR. HASSINGER: But, by the way, you</p> <p>4 would know better than anybody else. If that</p> <p>5 goes to town meeting, if that warrant article</p> <p>6 goes to town meeting, is that a majority or a</p> <p>7 two-thirds?</p> <p>8 CHAIRMAN ROBBINS: I think that's a</p> <p>9 two-thirds.</p> <p>10 MS. HASSINGER: Good luck.</p> <p>11 MR. HEEP: It is.</p> <p>12 MR. HASSINGER: He's the assistant</p> <p>13 moderator at the town meeting.</p> <p>14 CHAIRMAN ROBBINS: So for the record</p> <p>15 the vote is carried by -- the motion is carried</p> <p>16 by a vote of four in favor, one against, rollcall</p> <p>17 as noted.</p> <p>18 MR. WHITNEY: Till when?</p> <p>19 MR. WOOD: Two weeks from now, Mr.</p> <p>20 whitney.</p> <p>21 CHAIRMAN ROBBINS: Thank you all for</p> <p>22 your participation and your patience.</p> <p>23 (The hearing adjourned.)</p> <p>24</p>
<p style="text-align: right;">351</p> <p>1 MR. WOOD: I don't think we can mandate</p> <p>2 that, but --</p> <p>3 CHAIRMAN ROBBINS: That's our</p> <p>4 understanding that the applicant has taken notes</p> <p>5 of and has acknowledged the Board's request.</p> <p>6 Doesn't have to be a part of the motion.</p> <p>7 Moved and seconded? Discussion?</p> <p>8 Hearing none, all in favor aye?</p> <p>9 BOARD MEMBERS: Aye.</p> <p>10 CHAIRMAN ROBBINS: Opposed?</p> <p>11 MR. HASSINGER: No.</p> <p>12 MR. LAYDON: Did you vote in affirm?</p> <p>13 MS. HASSINGER: Oh, yes, sorry. You</p> <p>14 opposed? I didn't hear the vote. Yes, I'm</p> <p>15 voting yes.</p> <p>16 MR. HASSINGER: You're voting yes.</p> <p>17 You're voting yes?</p> <p>18 MR. VENKATARAMAN: Yes.</p> <p>19 MR. HASSINGER: Dave, you're voting</p> <p>20 yes?</p> <p>21 CHAIRMAN ROBBINS: Voting yes.</p> <p>22 MR. HASSINGER: You're voting yes?</p> <p>23 MR. WOOD: Yes.</p> <p>24 MR. HASSINGER: And I'm voting no. The</p>	<p style="text-align: right;">353</p> <p>1 <u>CERTIFICATION</u></p> <p>2</p> <p>3</p> <p>4</p> <p>5 I, STAR GATES CURRY, hereby certify the</p> <p>6 foregoing to be a true and complete transcript of</p> <p>7 the proceedings at the subject hearing.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 COURT REPORTER</p> <p>13</p> <p>14 DATED: _____</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT</p> <p>20 DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME IN</p> <p>21 ANY RESPECT UNLESS UNDER THE DIRECT CONTROL</p> <p>22 AND/OR SUPERVISION OF THE CERTIFYING REPORTER.</p> <p>23</p> <p>24</p>

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